

MONTANA LEGISLATIVE HISTORY

Chapter 193 19 93

Bill H _____ S 160

Original bill & history ✓ C

H. Committee on Labor & Employment Relations

S. Committee on Labor & Employment Relations

Hearing Date(s) Mar 22 ✓ C

Hearing Date(s) Jan 21 ✓ C

Mar 24 ✓ C

Jan 26 ✓ C

_____ C

_____ C

_____ C

_____ C

Date Out Mar 25 ✓ C

Jan 27 ✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

SB 160 INTRODUCED BY RYE, ET AL.
PROHIBIT DISCRIMINATION FOR LAWFUL USE OF PRODUCT AWAY FROM WORK

1/15	INTRODUCED		
1/15	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/15	FISCAL NOTE REQUESTED		
1/15	FISCAL NOTE RECEIVED		
1/20	FISCAL NOTE RECEIVED		
1/21	HEARING		
1/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/22	REVISED FISCAL NOTE REQUESTED		
1/22	REVISED FISCAL NOTE RECEIVED		
1/22	REVISED FISCAL NOTE PRINTED		
1/23	TAKEN FROM 2ND READING AND REREFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/27	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/28	2ND READING PASSED AS AMENDED	47	0
1/29	3RD READING PASSED	46	1
	TRANSMITTED TO HOUSE		
1/30	FISCAL NOTE REQUESTED		
1/30	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/02	HEARING		
3/06	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/09	2ND READING CONCURRED	63	35
3/11	3RD READING CONCURRED	66	33
	RETURNED TO SENATE WITH AMENDMENTS		
3/16	2ND READING AMENDMENTS CONCURRED	50	0
3/17	3RD READING AMENDMENTS CONCURRED	47	1
3/19	SIGNED BY PRESIDENT		
3/21	SIGNED BY SPEAKER		
3/22	TRANSMITTED TO GOVERNOR		
3/25	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 193		
	EFFECTIVE DATE: 10/01/93		

SB 161 INTRODUCED BY JERGESON, ET AL.
REVISE MICROBUSINESS DEVELOPMENT ACT

1/15	INTRODUCED		
1/15	REFERRED TO BUSINESS & INDUSTRY		
1/15	FISCAL NOTE REQUESTED		
1/15	FISCAL NOTE RECEIVED		
1/19	FISCAL NOTE RECEIVED		
1/20	FISCAL NOTE PRINTED		
1/22	HEARING		
1/26	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/27	2ND READING PASSED	47	0
1/28	3RD READING PASSED	45	0
	TRANSMITTED TO HOUSE		
1/29	FISCAL NOTE REQUESTED		
1/30	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
2/11	HEARING		
2/12	COMMITTEE REPORT—BILL CONCURRED		
2/22	2ND READING CONCURRED	93	6
2/24	3RD READING CONCURRED	89	10
	RETURNED TO SENATE		
3/03	SIGNED BY PRESIDENT		
3/06	SIGNED BY SPEAKER		
3/08	TRANSMITTED TO GOVERNOR		

1 *Senate* BILL NO. *160*
 2 INTRODUCED BY *Reggie Davis Lynette Bandman*
 3 *John ...*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING
 5 DISCRIMINATION AGAINST AN EMPLOYEE FOR USE OF A LAWFUL
 6 PRODUCT DURING NONWORKING HOURS; AND PROVIDING FOR CIVIL
 7 DAMAGES."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 NEW SECTION. Section 1. Discrimination prohibited for
 11 use of lawful product during nonworking hours -- exceptions.

12 (1) Except as provided in subsections (2) and (3), an
 13 employer may not refuse to employ or license and may not
 14 discharge or otherwise discriminate against an individual
 15 with respect to compensation, promotion, or the terms,
 16 conditions, or privileges of employment because the
 17 individual legally uses a lawful product off the employer's
 18 premises during nonworking hours.

19 (2) Subsection (1) does not apply to:

20 (a) use of a lawful product that:

21 (i) impairs an individual's ability to perform
 22 job-related employment responsibilities or threatens the
 23 safety of other employees; or

24 (ii) conflicts with a bona fide occupational
 25 qualification that is reasonably related to the individual's

1 employment;

2 (b) an individual who, on a personal basis, has a
 3 professional service contract with an employer and the
 4 unique nature of the services provided authorizes the
 5 employer, as part of the service contract, to limit the use
 6 of certain products; or

7 (c) an employer that is a nonprofit organization that,
 8 as one of its primary purposes or objectives, discourages
 9 the use of one or more lawful products by the general
 10 public.

11 (3) An employer does not violate this section if the
 12 employer takes action based on the belief that the
 13 employer's actions are permissible under an established
 14 substance abuse or alcohol program or policy, professional
 15 contract, or collective bargaining agreement.

16 (4) An employer may offer, impose, or have in effect a
 17 health, disability, or life insurance policy that makes
 18 distinctions between employees for the type or price of
 19 coverage based on the employees' recreational activities or
 20 use of a product if:

21 (a) differential rates assessed against employees
 22 reflect actuarially justified differences in providing
 23 employee benefits;

24 (b) the employer provides an employee with written
 25 notice delineating the differential rates used by the

1 employer's insurance carriers; and

2 (c) the distinctions in the type or price of coverage
3 is not used to expand, limit, or curtail the rights or
4 liabilities of a party in a civil cause of action.

5 NEW SECTION. **Section 2.** Civil action. An individual
6 who is discharged, discriminated against, or denied
7 employment in violation of [section 1] may file a civil
8 action against an employer within 1 year of the alleged
9 violation and may receive actual damages, court costs, and
10 reasonable attorney fees.

11 NEW SECTION. **Section 3.** Codification instruction.
12 [Sections 1 and 2] are intended to be codified as an
13 integral part of Title 39, chapter 2, part 3, and the
14 provisions of Title 39, chapter 2, part 3, apply to
15 [sections 1 and 2].

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Revised Fiscal Note for SB0160 as introduced

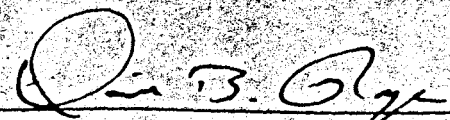
DESCRIPTION OF PROPOSED LEGISLATION:

An act prohibiting discrimination against an employee for use of a lawful product during non-working hours; and providing for civil damages.

FISCAL IMPACT:

No known, estimable fiscal impact.

 1-21-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1-22-93
DAVID RYE, PRIMARY SPONSOR DATE

Revised Fiscal Note for SB0160, as introduced.

SB 160 Rev.

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Sen. Towe, Chair, on January 21, 1993, at 1:00 P.M.

ROLL CALL

Members Present:

Sen. Tom Towe, Chair (D)
Sen. Bill Wilson, Vice Chair (D)
Sen. Gary Aklestad (R)
Sen. Chet Blaylock (D)
Sen. Jim Burnett (R)
Sen. Tom Keating (R)
Sen. J.D. Lynch (D)

Members Excused: Sen. Chet Blaylock

Members Absent: None

Staff Present: Eddye McClure, Legislative Council
Patricia Brooke, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 160
Executive Action: SB 160

HEARING ON SB 160

Opening Statement by Sponsor:

Senator David Rye, Senate District 47, Billings, spoke from written testimony of the bill he is sponsoring (Exhibit #1).

Proponents' Testimony:

Rep. Jerry Driscoll, House District 92, noted people are tired of employers and government imposing their will on what employees are doing after hours when they are not working. In support of this bill he stated it is nobody's business what employees are doing in the privacy of their own home.

Sen. J.D. Lynch, Senate District 35, stated he is a co-sponsor of this bill because he does not want big government or big business to pick on individual rights. He thinks this bill makes sense because the individual right to privacy is so important. Sen.

Lynch urged the committee to support SB 160.

Jeannine Manuel, homemaker, Fairfield, supports SB 160 because she is worried the right to privacy is being threatened. She strongly believes what one does in the privacy of their home is their business.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

Sen. Aklestad asked if there is a problem in Montana that requires this bill. Sen. Rye answered he is unaware of any problems but feels this bill is important to ward off any problems that could occur.

Sen. Keating asked Sen. Rye if this bill is designed to prohibit employers from discriminating in hiring and firing practices because they use lawful products on their own time. Sen. Rye responded if the use of the product is the sole basis for the discrimination then, yes, this bill is designed to prevent that. Sen. Rye stated he wanted to make clear this bill does not prevent employers from charging higher health insurance rates to smokers they employ.

Sen. Lynch noted the fiscal note is misworded and should state it prohibits discrimination against an employee for use of a lawful product during non-working hours.

Closing by Sponsor:

Sen. Rye said he submitted amendments requested by Burlington Northern(BN). BN had some concern that this bill may affect their ability to drug test their employees or take action if an employee was found inebriated after drinking the night before. He said he wanted to make clear that smoking is not the issue but employee privacy.

EXECUTIVE ACTION ON SB 160

Motion: Sen. Lynch moved to adopt the amendment submitted by Burlington Northern(Exhibit #1, parts 1 and 2).

Discussion: Eddy McClure explained the amendments.

Motion/Vote: The motion to adopt the amendments passed unanimously.

Motion: Sen. Lynch moved SB 160 DO PASS AS AMENDED.

Discussion: Sen. Towe had a question about the wrongful discharge

in section 2 of the bill and how it corresponds to the existing wrongful discharge laws. Sen. Towe wondered if the committee was making a different law on the wrongful discharge. Sen. Towe asked Ann MacIntyre of the Human Rights Commission if she believed SB 160 would violate the current wrongful discharge law. Ms. MacIntyre answered she did not know.

Sen. Towe asked Sen. Rye if it was his intent to change the wrongful discharge section of the law. Sen. Rye answered no, that was not his intent.

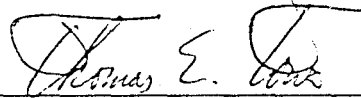
Motion: Sen. Lynch moved to adopt the amendment that Sen. Towe stated(Exhibit #2, part 3).

Vote: The amendment was adopted unanimously by the committee.

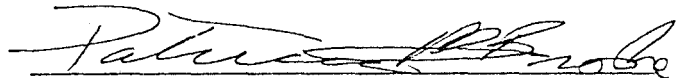
Motion/Vote: Sen. Lynch moved SB 160 DO PASS AS AMENDED. The motion carried unanimously.

ADJOURNMENT

Adjournment: 1:19 P.M.



SEN. TOM TOWE, Chair



PATRICIA BROOKE, Secretary

TET/pmb

ROLL CALL

SENATE COMMITTEE LABOR & EMPLOYMENT REL. DATE 1/20/93

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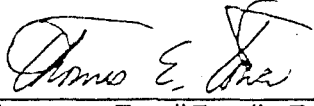
Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 22, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 160 (first reading copy -- white), respectfully report that Senate Bill No. 160 be amended as follows and as so amended do pass.

Signed: 
Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

1. Page 1, line 21.

Following: "(i)"

Strike: "impairs"

Insert: "affects in any manner"

2. Page 1, line 22.

Following: "or"

Strike: "threatens"

3. Page 3, lines 8 through 10.

Following: "action" on line 8

Strike: remainder of line 8 through "fees" on line 10

Insert: "for remedies as provided in 39-2-905"

-END-

STATEMENT OF SENATOR DAVID RYE
OF SENATE DISTRICT 47
IN SUPPORT OF SENATE BILL 160

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 7/

DATE 1/21/93

BILL NO. _____

~~For the record,~~ I am Senator David Rye from Billings, Montana, Senate District 47, chief sponsor of Senate Bill 160.

Senate Bill 160 is entitled "An Act Prohibiting Discrimination Against an Employee for Use of a Lawful Product During Non-Working Hours, and Providing for Civil Damages." My principal reason for sponsoring this bill is my concern regarding an emerging trend in the American work place that directly threatens everyone's right to privacy. Through the media and several news stories, I have learned employers across the country are attempting to extend their control over the lives of their employees to include what their employees do in their own homes and away from work during off-duty hours.

Apparently, the driving force behind this trend is economics, in particular the rising cost of health care provided by employers. Employers' desire to keep health care costs down is understandable in light of our struggling economy, but the destruction of an American's private life is too high a price to pay for small reductions in health care costs. Virtually, every decision a person makes has some impact on that person's health. These decisions run the gamut from having a cup of coffee in the morning to choosing whether or not one should have children. By selectively discriminating against people based upon specific lifestyle choices, employers are acting as societal "health police." If this trend continues, eventually employers will police every aspect of an employee's life that affects his or her health, from an employee's diet to the amount of sleep that employees get at night.

Members of this Committee might think I am overreacting to a problem that may not be of much concern in this State of Montana. However, even as far back as 1988 (according to an Administrative Management Survey), over 6,000 companies were discriminating against both current employees and applicants based on their legal activities during non-working hours. Reports are that this figure has certainly risen over the past few years. Two groups in particular have received the bulk of this type of discrimination, namely people who are overweight and people who smoke. However, many complaints have been filed by people who have a high serum cholesterol level -- people who are occasional social drinkers -- and even people who ride motorcycles or play contact sports.

This bill, in protecting the rights of employees, also will protect the rights of

employers. The employers are protected by Sections 2, 3, and 4 of the Bill.

Under Section 2 in the Bill, if the use of a lawful product during off-duty periods impairs the employee's ability to perform his/her work or endangers the safety of him/herself or others on the job, the employer is justified in taking appropriate action.

Under Section 3 of the Bill, the employer may take action based upon the belief that the employer's actions are permissible under an established substance abuse or alcohol program. Thus, if an employee has an alcohol problem and that employee needs treatment, the employer may require treatment so long as the treatment need is verified.

Under Section 4 of the Bill, if differential rates charged for insurance policies are actuarially justified because of the use of a lawful product by an employee, the employer is justified in making only such insurance policies available to the employee so long as the employee has notice of it.

Twenty-eight (28) state legislatures have passed laws such as Senate Bill 160 to protect employees' privacy. Members of this Committee, I feel this Bill protects Montana citizens and also employers. It protects those people in our society whose actions are based upon common sense and retains for them a feeling of human dignity.

Members of this Committee, please concur with Senate Bill 160.

Thank you very much for your attention.

Amendments to Senate Bill No. 160
First Reading Copy

For the Senate Labor Committee

Prepared by Eddye McClure
January 21, 1993

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 1/21/93
BILL NO. SB 160

1. Page 1, line 21.

Following: "(i)"

Strike: "impairs"

Insert: "affects in any manner"

2. Page 1, line 22.

Following: "or"

Strike: "threatens"

3. Page 3, lines 8 through 10.

Following: "action" on line 8

Strike: remainder of line 8 through "fees" on line 10

Insert: "for remedies as provided in 39-2-905"

DATE January 21 1993
 SENATE COMMITTEE ON Labor
 BILLS BEING HEARD TODAY: SB 160

Name	Representing	Bill No.	Check One Support Oppose	
<i>John Hudson</i>	<i>T. Moore, Jr.</i>	<i>SB 160</i>		
<i>Lamine Manuel</i>	<i>Ad</i>	<i>SB 160</i>	☒	
<i>Jerry Orisoll</i>	<i>HD 92</i>	<i>SB 160</i>	☒	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Burnett and Lynch voting no.

Discussion: Sen. Towe explained a need to amend page 18, section 6, line 9. If somebody has received an overpayment of compensation benefits and then becomes unemployed, this gives them the right to an offset so they take the unemployment entitlement until the payment is repaid. Sen. Towe feels the system is open to abuse and the unemployed person receives nothing because he is making repayments. It was suggested to give the Department of Labor legal authority to collect the overpayment not to exceed 50% of any one payment. Sen. Towe asked the Department of Labor to report back to the Committee on this issue.

EXECUTIVE ACTION ON SB 160

Discussion: Eddy McClure presented the proposed amendments (Exhibit #3). She clarified the intent of the amendments to SB 160 is to exhaust the grievance procedure in 120 days at which point the employee or employer can file a civil suit. She also explained the other amendments. Senator Rye stated his approval of the amendments.

Motion/Vote: Sen. Keating moved to adopt the amendments. The motion to amend SB 160 CARRIED UNANIMOUSLY.

Motion: Sen. Lynch moved SB 160 DO PASS AS AMENDED.

Vote: The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 15

Motion: Sen. Lynch moved to AMEND SB 15 (Exhibit #4).

Vote: The motion to amend SB 15 CARRIED with Senators Aklestad and Burnett voting against them.

Motion: Sen. Blaylock moved SB 15 DO PASS AS AMENDED.

Discussion: Sen. Aklestad spoke against SB 15. He argued complete authority is taken away from school boards with SB 15. He questioned the validity of mandating binding arbitration by statute. Sen. Towe questioned why the school parties should be forced to go to court when binding arbitration will work. Sen. Towe stated binding arbitration is an excellent way to handle the disputes between school parties and almost always cheaper. Sen. Keating stated SB 15 interjects the state into the collective bargaining procedure and he does not think the state should be there. Phil Campbell stated schools have no where to go on a breach of contract and it is necessary to find a solution, preferably in legislation rather than the court system.

ROLL CALL

SENATE COMMITTEE LABOR

DATE 1/26/93

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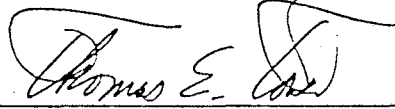
Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 3
January 27, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 160 (first reading copy -- white), respectfully report that Senate Bill No. 160 be amended as follows and as so amended do pass.

Signed: 
Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

1. Title, line 6.

Following: "HOURS;"

Insert: "AMENDING SECTION 39-2-903, MCA;"

2. Page 1, line 14.

Strike: "discharge or otherwise"

3. Page 1, line 21.

Following: "(i)"

Strike: "impairs"

Insert: "affects in any manner"

4. Page 1, line 22.

Following: "or"

Strike: "threatens"

5. Page 2, line 19.

Following: "employees'"

Strike: the remainder of line 19

6. Page 3, line 5.

Following: "action"

Insert: "-- limitation

Strike: "An"

Insert: "(1) Except as provided in subsection (2), an"

 Amd. Coord.
Sec. of Senate

210830SC.San

7. Page 3, lines 9 and 10.

Following: first "and"

Insert: "the court"

Following: "may" on line 9

Strike: through "costs,"

Insert: "require any reasonable measure to correct the discriminatory practice and to rectify the harm, pecuniary or otherwise, to the person discriminated against"

Following: second "and" on line 9

Insert: "may allow"

Following: "fees" on line 10

Insert: "to the prevailing party"

Following: line 10

Insert: "(2) Prior to filing a civil action under subsection (1), an employee shall, within 120 days of the alleged violation, initiate any internal grievance procedure available. If a grievance procedure is not exhausted within 120 days, the employee may file a civil action."

8. Page 3, line 11.

Following: line 10

Insert: "Section 3. Section 39-2-903, MCA, is amended to read:

"39-2-903. Definitions. In this part, the following definitions apply:

(1) "Constructive discharge" means the voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which an objective, reasonable person would find so intolerable that voluntary termination is the only reasonable alternative. Constructive discharge does not mean voluntary termination because of an employer's refusal to promote the employee or improve wages, responsibilities, or other terms and conditions of employment.

(2) "Discharge" includes a constructive discharge as defined in subsection (1) and any other termination of employment, including resignation, elimination of the job, layoff for lack of work, failure to recall or rehire, and any other cutback in the number of employees for a legitimate business reason.

(3) "Employee" means a person who works for another for hire. The term does not include a person who is an independent contractor.

(4) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability insurance plan, life insurance plan, and pension benefit plan in force on the date of the termination.

(5) "Good cause" means reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason. The legal use of a lawful product by an individual off the employer's premises during nonworking hours is not a legitimate business reason.

(6) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service as gross income on Form W-2 and includes additional compensation deferred at the option of the employee.

(7) "Public policy" means a policy in effect at the time of the discharge concerning the public health, safety, or welfare established by constitutional provision, statute, or administrative rule.""

Renumber: subsequent section

-END-

Amendments to Senate Bill No. 160
First Reading Copy

Requested by Senator Towe
For the Senate Labor Committee

Prepared by Eddye McClure

January 22, 1993

1. Title, line 6.
Following: "HOURS;"
Insert: "AMENDING SECTION 39-2-903, MCA;"
2. Page 1, line 14.
Strike: "discharge or otherwise"
3. Page 1, line 21.
Following: "(i)"
Strike: "impairs"
Insert: "affects in any manner"
4. Page 1, line 22.
Following: "or"
Strike: "threatens"
5. Page 2, line 19.
Following: "employees'"
Strike: the remainder of line 19
6. Page 3, line 5.
Following: "action"
Insert: "-- limitation"
Strike: "An"
Insert: "(1) Except as provided in subsection (2), an"
7. Page 3, lines 9 and 10.
Following: first "and"
Insert: "the court"
Following: "may" on line 9
Strike: through "costs,"
Insert: "require any reasonable measure to correct the discriminatory practice and to rectify the harm, pecuniary or otherwise, to the person discriminated against"
Following: second "and" on line 9
Insert: "may allow"
Following: "fees" on line 10
Insert: "to the prevailing party"
Following: line 10
Insert: "(2) Prior to filing a civil action under subsection (1), an employee shall, within 120 days of the alleged violation, initiate any internal grievance procedure"

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 3
DATE 1/26/93
BILL NO. SB 160

available. If a grievance procedure is not exhausted within 120 days, the employee may file a civil action."

8. Page 3, line 11.

Following: line 10

Insert: "Section 3. Section 39-2-903, MCA, is amended to read:

"39-2-903. Definitions. In this part, the following definitions apply:

(1) "Constructive discharge" means the voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which an objective, reasonable person would find so intolerable that voluntary termination is the only reasonable alternative. Constructive discharge does not mean voluntary termination because of an employer's refusal to promote the employee or improve wages, responsibilities, or other terms and conditions of employment.

(2) "Discharge" includes a constructive discharge as defined in subsection (1) and any other termination of employment, including resignation, elimination of the job, layoff for lack of work, failure to recall or rehire, and any other cutback in the number of employees for a legitimate business reason.

(3) "Employee" means a person who works for another for hire. The term does not include a person who is an independent contractor.

(4) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability insurance plan, life insurance plan, and pension benefit plan in force on the date of the termination.

(5) "Good cause" means reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason. The legal use of a lawful product by an individual off the employer's premises during nonworking hours is not a legitimate business reason.

(6) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service as gross income on Form W-2 and includes additional compensation deferred at the option of the employee.

(7) "Public policy" means a policy in effect at the time of the discharge concerning the public health, safety, or welfare established by constitutional provision, statute, or administrative rule."

{Internal References to 39-2-903:

2-18-101}"

Renumber: subsequent section

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chairman Tom Nelson, on March 2, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Tom Nelson, Chair (R)
Rep. Gary Feland, Vice Chair (R)
Rep. Vicki Cocchiarella (D)
Rep. Jerry Driscoll (D)
Rep. Alvin Ellis (R)
Rep. Pat Galvin (D)
Rep. Sonny Hanson (R)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carolyn Squires (D)
Rep. Bill Tash (R)
Rep. Rolph Tunby (R)
Rep. Carley Tuss (D)

Members Excused: Rep. Benedict, Rep. Whalen

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Cherri Schmaus, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 91, SB 160 & SB 184
Executive Action: None

HEARING ON SB 160

Opening Statement by Sponsor:

Sen. David Rye, SD 47, Yellowstone County, sponsor, opened on SB 160 by referring to a article in the July 1989 issue of State Government News. He read part of the article to the committee. Sen. Rye stated that the purpose of SB 160 is to allow employees to do anything they want on their off time, as long as it is legal. The employers can prohibit smoking and drinking while

working, but not while off duty.

Proponents' Testimony:

Jerome Anderson, a private attorney in Helena, stated that a number of other states already have adopted similar legislation into current law. He recognizes the fact that these employees can raise the insurance rates for the businesses. Activities performed by the employee, off-the-job must not effect their performance on-the-job.

Steve Brown, IBM, stated that his concern with the bill deals with the definition of a lawful product. Currently, there is no definition in the bill.

Charles Brooks, Montana Retail Association, stated that this bill reminds him of the memorandum sent out by the first JC Penny store restricting the employees outside activities. For example, this memorandum restricted the employees from smoking and drinking. Furthermore, the employees had to be in bed by 9 p.m. He stated that America has come a long way since those days and businesses can not regulate the activities of their employees while off duty. The employees outside activities should not effect their rate of promotion or raises.

Leo Berry, Burlington Northern Railroad, stated that employees are already subject to federal testing requirements. He referred to page 5, line 3 of the bill. He then referred to page 1, and page 2.

Opponents' Testimony:

Bruce Moerer, Montana School Board Association, stated that he has no problem with the concept of the bill, except in one area. The area he is concerned with is the area dealing with school employers and students. He referred the committee to page 1. He asked that an amendment be accepted by the committee that exempts school employees from the bill. He referred to page 5 and stated that he is concerned with the current language. He stated that Senator Rye is receptive to his proposed amendments.

Lauren Frazer, School Administration, stated that he has the same concerns as Mr. Moerer, but his concerns deal more with the bus drivers. He stated that the way the language reads, if a bus driver has alcohol on his/her breath, the school would have to prove he/she is not capable of operating the bus.

Don Waldron, Montana Rural Education Association, stated that he has the same concerns as the Mr. Frazer. He then referred to page 2 of the bill. He stated that page 2 helps, but he still sees a problem.

Questions From Committee Members and Responses:

REP DRISCOLL asked Sen. Rye why the wording "effect in any manner" was used in the bill and not the word "impaired".

SEN. RYE replied that he does not know. He referred Rep. Driscoll to Mr. Anderson. Mr. Anderson told Rep. Driscoll that these amendments were proposed by Senator Toews.

REP. MILLS told Sen. Rye that he has employees that work all over. These employees drive his vehicles. He asked if he is responsible if they wreck his vehicle?

SEN. RYE told him that he is not responsible as long as it is job related, and the employees were driving a company vehicle.

REP. TASH asked Sen. Rye if he was willing to except the proposed amendments?

SEN. RYE stated that he can live with the proposed amendments because the bill is modeled after similar legislation in 20 other states.

REP. DRISCOLL asked Mr. Moerer had any proposed amendments.

REP. DRISCOLL asked Mr. Moerer if this bill also includes superintendents who have a drink at lunch.

Mr. Moerer stated that the proposed amendment covers all school employees.

Closing by Sponsor:

SEN. RYE closed on SB 160 by apologizing for all the amendments. He referred to page 2, lines 4 through 8 and stated that these sections take care of a potential problem that could arise at certain places of employment. An example of a potential problem is an employer of the Mormon Church who smokes and drinks. He again stated that an employees business is his/her own on their off time.

HEARING ON SB 91

Opening Statement by Sponsor:

SEN. CHRISTIAENS, SD 18, Cascade, Sponsor, stated that the purpose of SB 91 is to extend worker's compensation coverage to prerelease and diversionary programs. He stated that as inmates, these employees are required to pay child support, restitution and they must start a savings account. This bill will extend the inmates' coverage if they are employed outside the prison. This bill does not cover those who are seriously injured. This bill will help inmates transition back into the community. The employers of these inmates pay workers compensation anyway, the inmates might as well receive full benefits.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Labor COMMITTEE BILL NO. SB160
DATE 3-2-93 SPONSOR(S) D. Rye

PLEASE PRINT

PLEASE PRINT

[illegible]

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Vice Chairman Gary Feland, on March 4, 1993,
at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Tom Nelson, Chair (R)
Rep. Gary Feland, Vice Chair (R)
Rep. Steve Benedict (R)
Rep. Vicki Cocchiarella (D)
Rep. Jerry Driscoll (D)
Rep. Alvin Ellis (R)
Rep. Pat Galvin (D)
Rep. Sonny Hanson (R)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carolyn Squires (D)
Rep. Bill Tash (R)
Rep. Rolph Tunby (R)
Rep. Carley Tuss (D)
Rep. Tim Whalen (D)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Cherri Schmaus, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 207, SB 256 & SB 270
Executive Action: SB 160, SB 184, SB 270 & SB 207

HEARING ON SB 256

Opening Statement by Sponsor:

SEN. CHARLES SWYSGOOD, SD 37, Madison and Beaverhead Counties,
sponsor, opened on SB 256 by addressing the situation that

include large numbers. Furthermore, anyone drawing workers' compensation can go to court and still draw for preexisting conditions.

REP. HANSON stated that the judge makes the decision of who goes to the prerelease centers.

REP. ELLIS stated that the meat of SB 91 is the change in the definition of who is entitled to benefits.

Susan Fox stated that inmates in prerelease are still considered incarcerated.

REP. DRISCOLL stated that if these inmates go to the prerelease, they must look for work, if they don't find work in a certain amount of time, they return to the prison. He stated that his concern is with those inmates hurt prior to going into prison who are cut of their current benefits.

REP. HANSON moved the amendment on page 6, line 7 through 9, so that it does not cover preexisting conditions.

Susan Fox referred to line 20 after the words "work related injury" to add "residential prerelease". This language would mean that the injury must be received while in the program.

REP. PAVLOVICH moved the amendment.

REP. COCCHIARELLA stated that she is concerned that those under house arrest would not be covered if this language was changed.

REP. SIMON moved that the executive action on SB 91 be deferred until a later date.

EXECUTIVE ACTION ON SB 160

Motion: REP. HANSON MOVED SB 160 DO BE CONCURRED IN.

Discussion: CHAIRMAN NELSON explained the proposed amendments, dated March 2, 1993 by Eddy McClure, to the committee.

Mr. Anderson explained #3 of the amendments to the committee by their request. He stated that this amendment covers IBM employees who borrow or steal software and use it for their own personal use.

REP. BENEDICT asked Mr. Anderson what does computer software have to do with SB 160?

Mr. Anderson replied that IBM has experienced problems with their employees taking the software home. This software is considered a lawful product.

REP. WHALEN asked Mr. Anderson if amendment #3 is needed even

with the definition of a lawful product in amendment #1.

REP. SQUIRES read the title of the bill and stated that software does not really fit into the title of SB 160.

REP. HANSON stated that this bill does not exclude marketable products.

REP. MILLS stated that if these employees take home the software, it is illegal use of a lawful product.

REP. TUNBY stated that he feels the committee should visit with the sponsor before voting on SB 160.

REP. WHALEN moved to separate the amendments and vote on them separately. The question was called on #1 and #2 of the amendments. The motion to do pass amendment #1 and #2 CARRIED unanimously.

REP. HANSON moved amendment #3. The question was called on #3. The motion to do pass FAILED by a vote of 7 to 9.

REP. SQUIRES moved the amendments dated February 10, 1993 by Eddy McClure.

REP. PAVLOVICH called the question on the February 10, 1993 amendment. The motion to do pass CARRIED unanimously.

REP. ELLIS move the amendments dated March 4, 1993 prepared by Susan Fox.

REP. DRISCOLL stated that the language in this amendment could get an employee fired if they drink at all.

REP. COCCHIARELLA addressed page 2, line 13.

REP. BENEDICT called for the question on the March 4, 1993 amendments. The motion to do pass FAILED unanimously.

REP. SQUIRES MOVED SB 160 BE CONCURRED IN AS AMENDED. The question was called. A voice vote was taken. The motion to BE CONCURRED IN AS AMENDED CARRIED 15 to 1, with REP. MILLS voting no.

EXECUTIVE ACTION ON SB 184

Motion: REP. SIMON MOVED SB 184 BE CONCURRED IN.

Discussion: REP. SIMON stated that the newspaper is concerned because the current language would put minors in a situation where they could sign for their own rights. This bill makes sure the parents must also sign.

Motion/Vote: REP. PAVLOVICH MOVED THE AMENDMENT DATED MARCH 2,

HOUSE OF REPRESENTATIVES

LABOR

COMMITTEE

ROLL CALL

DATE _____

3/4/93

[illegible]

HOUSE STANDING COMMITTEE REPORT

March 5, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate Bill 160 (third reading copy -- blue) be concurred in as amended .

Signed: Tom Nelson
Tom Nelson, Chair

And, that such amendments read:

Carried by: Rep. Pavlovich

1. Page 1, line 13.

Following: line 12

Insert: "(1) For purposes of this section, "lawful product" means a product that is legally consumed, used, or enjoyed and includes food, beverages, and tobacco.

Following: "subsections"

Strike: "(2) and (3)"

Insert: "(3) and (4)"

Renumber: subsequent subsections

2. Page 1, line 20.

Strike: "(1)"

Insert: "(2)"

3. Page 5, line 5

Following: "reason"

Insert: ", unless the employer acts within the provisions of [section 1(3) or (4)]"

-END-

Committee Vote:
Yes 15, No .

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CHAPTER NO. 193

[SB 160]

AN ACT PROHIBITING DISCRIMINATION AGAINST AN EMPLOYEE FOR USE OF A LAWFUL PRODUCT DURING NONWORKING HOURS; AMENDING SECTION 39-2-903, MCA; AND PROVIDING FOR CIVIL DAMAGES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Discrimination prohibited for use of lawful product during nonworking hours — exceptions. (1) For purposes of this section, “lawful product” means a product that is legally consumed, used, or enjoyed and includes food, beverages, and tobacco.

(2) Except as provided in subsections (3) and (4), an employer may not refuse to employ or license and may not discriminate against an individual with respect to compensation, promotion, or the terms, conditions, or privileges of employment because the individual legally uses a lawful product off the employer’s premises during nonworking hours.

(3) Subsection (2) does not apply to:

(a) use of a lawful product that:

(i) affects in any manner an individual’s ability to perform job-related employment responsibilities or the safety of other employees; or

(ii) conflicts with a bona fide occupational qualification that is reasonably related to the individual’s employment;

(b) an individual who, on a personal basis, has a professional service contract with an employer and the unique nature of the services provided authorizes the employer, as part of the service contract, to limit the use of certain products; or

(c) an employer that is a nonprofit organization that, as one of its primary purposes or objectives, discourages the use of one or more lawful products by the general public.

(4) An employer does not violate this section if the employer takes action based on the belief that the employer’s actions are permissible under an established substance abuse or alcohol program or policy, professional contract, or collective bargaining agreement.

(5) An employer may offer, impose, or have in effect a health, disability, or life insurance policy that makes distinctions between employees for the type or price of coverage based on the employees’ use of a product if:

(a) differential rates assessed against employees reflect actuarially justified differences in providing employee benefits;

(b) the employer provides an employee with written notice delineating the differential rates used by the employer’s insurance carriers; and

(c) the distinctions in the type or price of coverage is not used to expand, limit, or curtail the rights or liabilities of a party in a civil cause of action.

Section 2. Civil action limitation. (1) Except as provided in subsection (2), an individual who is discharged, discriminated against, or denied employment in violation of [section 1] may file a civil action against an employer within 1 year of the alleged violation and the court may require any reasonable measure to correct the discriminatory practice and to rectify the harm, pecuniary or otherwise, to the person discriminated against and may allow reasonable attorney fees to the prevailing party.

(2) Prior to filing a civil action under subsection (1), an employee shall, within 120 days of the alleged violation, initiate any internal grievance procedure available. If a grievance procedure is not exhausted within 120 days, the employee may file a civil action.

Section 3. Section 39-2-903, MCA, is amended to read:

“39-2-903. Definitions. In this part, the following definitions apply:

(1) “Constructive discharge” means the voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which an objective, reasonable person would find so intolerable that voluntary termination is the only reasonable alternative. Constructive discharge does not mean voluntary termination because of an employer’s refusal to promote the employee or improve wages, responsibilities, or other terms and conditions of employment.

(2) “Discharge” includes a constructive discharge as defined in subsection (1) and any other termination of employment, including resignation, elimination of the job, layoff for lack of work, failure to recall or rehire, and any other cutback in the number of employees for a legitimate business reason.

(3) “Employee” means a person who works for another for hire. The term does not include a person who is an independent contractor.

(4) “Fringe benefits” means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability insurance plan, life insurance plan, and pension benefit plan in force on the date of the termination.

(5) “Good cause” means reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer’s operation, or other legitimate business reason. *The legal use of a lawful product by an individual off the employer’s premises during nonworking hours is not a legitimate business reason, unless the employer acts within the provisions of [section 1(3) or (4)].*

(6) “Lost wages” means the gross amount of wages that would have been reported to the internal revenue service as gross income on Form W-2 and includes additional compensation deferred at the option of the employee.

(7) “Public policy” means a policy in effect at the time of the discharge concerning the public health, safety, or welfare established by constitutional provision, statute, or administrative rule.”

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 39, chapter 2, part 3, and the provisions of Title 39, chapter 2, part 3, apply to [sections 1 and 2].